IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 30654 of 2001(Y)

PETITIONER:
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1. EDWIN S., CHURCH VIEW,
AMBALATHIKARA, KAZHAKOOTTAM P.O,
THIRUVANANTHAPURAM.

2. UNNIKRISHNAN V.R., VADYAPPILLIL HOUSE,
NETTOOR P.O,
ERNAKULAM DISTRICT.

3. G.GNANA RAO, MADATHIL PUTHEN VEDU,
PAYAD P.O, THIRUVANANTHAPURAM.

4. ANTONY K.P,
TECHNICAL ASSISTANT GROUP I,
RAJIV GANDHI CENTRE FOR BIO-TEHCNOLOGY,
JAGATHY, THIRUVANANTHAPURAM.

BY ADV. SRI.N.N.SUGUNAPALAN

RESPONDENTS:
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1. DIRECTOR, RAJIV GANDHI CENTRE
FOR BIO TECHNOLOGY, JAGATHY,
THIRUVANANTHAPURAM.

2. RAJIV GANDHI CENTRE FOR BIO-TECHNOLOGY
REPRESENTED BY MEMEBR SECRETARY,
JAGATHY, THIRUVANANTHAPURAM.

BY ADV. SRI.R.HARIKRISHNAN FOR R1 AND R2
SRI.C.HARIKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.30654/2001

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER OF THE 1ST PETITIONER DATED 18.1.2000.

EXT.P2: TRUE COPY OF THE NOTIFICATION PUBLISHED IN EMPLOYMENT NEWS 30/3-5/4/96.

EXT.P3: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 4TH PETITIONER BEFORE THE RESPONDENTS DATED 11.1.2000.

EXT.P4: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN OP NO.6470/2001 DATED 26TH FEBRUARY, 2001.

EXT.P5: TRUE COPY OF THE COMMUNICATION DATED 25TH AUGUST 2001 SENT BY THE COMMITTEE CONSTITUTED BY THE RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 30654 OF 2001
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Dated this the 28th day of March, 2007

J U D G M E N T

Ext.P2 is the vacancy notification issued by the respondents inter alia inviting applications for the post of Technical Assistants. Group I Technical Assistant carried scale of pay of Rs.750-940 and the qualification prescribed was SSLC with two years working experience in any Industrial Laboratory or Science Laboratories in Colleges or Universities. Responding to Ext.P2 vacancy notification, petitioners applied, and on being selected, joined duty, and Ext.P1 is the order of appointment issued to the first petitioner. Ext.P3 is a representation submitted by one of the petitioners. The main complaint in Ext.P3 is that the rules followed by the respondents are those followed in CSIR and that in respect of the post for which the qualifications are SLLC with ITI Certificate or experience in lab, the scale of pay prevailing in CSIR was Rs.950-1400 and that the scale of pay of Rs.750-940/- extended to the petitioners in Ext.P2 vacancy notification and the orders of appointment was erroneous. Complaining that the

representation so made by them was not being considered or disposed of, an original petition was filed in this Court as OP No.6470/01, which was disposed of by Ext.P4 directing that the representation shall be considered and orders passed after affording an opportunity of hearing to the petitioners. In pursuance to the judgment of this Court, it would appear that the petitioners were afforded an opportunity of hearing and Ext.P5 is the order issued and the request made by them for revision of the scale of pay that was extended to them has been rejected. It is seeking to quash Ext.P5 and to direct the first respondent to fix the scale of pay as Rs.950-1400 for Technical Assistants like the petitioners, that this original petition has been filed.

2. On going through the pleadings, it would appear that the petitioners proceed on the basis that the rules that are in vogue in the first respondent are those prevailing in CSIR. According to them for the post for which equivalent qualification is prescribed, the scale of pay prevailing in CSIR is Rs.950-1400 and therefore it is discriminatory to extend the scale of pay of Rs.750-940.

3. I am not in a position to accept the contentions raised

by the petitioners for more reasons than one. First of all, the scale of pay that was extended to them was indicated in Ext.P2 vacancy notification itself and therefore it was with the full knowledge that on their eventual selection and appointment, they will be getting pay in the scale of Rs.750-940 that the petitioners had applied to the post and accepted appointment subsequently. After having accepted the appointment with the full knowledge of the scale of pay that they are entitled to enjoy, it is not open to the petitioners to turn around and say that there is an error in the fixation of pay. That apart Ext.P5 order impugned itself shows that during the course of the personal hearing extended to them pursuant to Ext.P4 judgment of this Court, it was made known to them that the very basis of parity with CSIR claimed by them was erroneous. It is stated that this mistake committed on the basis of which the petitioners have proceeded was realised by the petitioners and they themselves had requested to withdraw their letter dated 11th January 2000. The letter dated 11th January 2000 mentioned in Ext.P5 is none other than Ext.P3, which was ordered to be considered and disposed of by Ext.P4 judgment. Thus the withdrawal of Ext.P3 would certainly indicate that the petitioner

had no surviving grievance after having realised the mistake that they had committed. If that be so, I wonder whether they had any cause of action even to have filed this original petition itself. The statement in Ext.P5 that the petitioners had withdrawn Ext.P3 complaint is not refuted in the pleadings, in which case, the petitioners could not have had any grievance even to agitate in this original petition.

4. Even otherwise, the counter affidavit filed by the respondents 1 and 2 also dispute the parity which the petitioners have mentioned in the original petition. A reading of para 5 of the counter affidavit shows that for the post carrying scale of pay Rs.950-1400, the qualification prescribed in CSIR is SSC/10th Standard with 50% marks in aggregate and ITI Certificate of two years duration in the relevant trade or SSC/HSC/12th with relevant technical subjects and a minimum of 60% marks in the aggregate. So therefore, for the scale of pay Rs.950-1400 claimed by the petitioners, the qualification prescribed as per CSIR rules is also far more superior than what is prescribed in Ext.P2 vacancy notification issued by the respondents. If qualification prescribed for the post is also superior, comparing the post held by them

with the post in CSIR carrying scale Rs.950-1400, it cannot be pleaded that they are being discriminated. Even if it is assumed that what the petitioners are complaining of is discrimination, such plea is also unsustainable. This is for the reason that discrimination cannot be pleaded by comparing oneself with another set of employees who are working in a different establishment. Discrimination can be pleaded only with similarly situated employees working within the organisation, that is the first respondent itself. Since the petitioners are attempting to compare themselves with the situation that is prevailing in CSIR, there cannot be a plea of discrimination as well.

In the circumstances, I do not find any merit in the original petition and it is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp